To: Mr. Saskia Slomp
Technical Director
Fédération des Experts Comptables
Européens AISBL
Av. D'Auderghem 22-28
B-1040 Bruxelles

Re: Discussion Paper Comfort Letters Issued in Relation to Financial Information in a Prospectus

In April 2005, the Fédération des Experts Comptables Européens (FEE) issued a Discussion Paper setting out (a) its view of the most common issues that may arise in the issuance of comfort letters as a result of the recently introduced European Union Prospectus Directive and (b) guidance for auditors, which FEE describes as "best practice". FEE invited participants in the European capital markets to respond to the issues raised and the proposals set forth in its Discussion Paper.

Credit Suisse First Boston is an active participant in the Euromarkets. We are the number one European IPO house, both by number of transactions and by aggregate deal value.

Our response is set out below. Our letter does not seek to address all of the issues raised by FEE in detail. In addition to giving brief responses to the issues for discussion raised by FEE, our letter addresses in detail those issues referred to by FEE where (a) we believe that FEE has not accurately set out current market practice; (b) we do not agree with a specific proposal put forward by FEE; or (c) we are of the view that current practice should be altered.

General

It is important to first make clear that we disagree with the premise of the Discussion Paper; specifically, that the introduction of the Prospectus Directive gives rise to the issues presented for discussion by FEE. In its Discussion Paper, FEE asserts that changes are necessary to current practice because "the Prospectus Directive will bring about a major change, in that a single European prospectus will be available". FEE claims that use of a single prospectus pursuant to the Prospectus Directive will expose auditors to liability in multiple jurisdictions and, therefore, the work performed by the auditors needs to comply with the most onerous liability regime.

We disagree with FEE's claim that the Prospectus Directive necessitates the proposals set forth in the Discussion Paper. The introduction of the Prospectus Directive has not changed the prospectus liability requirements with respect to auditors. And, while the Prospectus Directive has introduced one set of requirements for the structure and content of prospectuses used in securities offerings in EU Member States, securities offerings to both retail and institutional investors across Europe on the basis of a single prospectus were common practice prior to the adoption of the Prospectus

Directive. Securities offerings to institutional investors in multiple jurisdictions were typically made on the basis of a single international prospectus, and an established system of mutual recognition allowed a single prospectus to be used in retail offerings in multiple jurisdictions. The Prospectus Directive does not necessitate the changes to the accepted market practice in multi-jurisdictional offerings proposed by FEE.

Not only do we disagree with the premise of the Discussion Paper, we also disagree in some cases with FEE's characterization of current market practice with respect to comfort letters and with several of its proposals to change current market practice by limiting the comfort provided by auditors in comfort letters. We have set out our comments on your Issues for Discussion in detail below.

1. Negative Assurance post-Audit or Review (Issue for Discussion 1)

Comfort letters typically contain negative assurance covering the period from the date of the latest audited or reviewed financial statements until the cut-off date. The negative assurance is a confirmation from the auditor that nothing has come to its attention that causes it to believe that certain identified line items have increased or decreased. Negative assurance is an integral part of the comfort letter in multi-jurisdictional offerings and is omitted only in exceptional circumstances.

FEE states that current practice is for auditors to prepare and issue comfort letters on the basis of agreed-upon procedures. Under this approach, an auditor simply provides a report of the factual findings and no assurances are expressed. FEE states that comfort letters "may also involve assurance work in order to provide assurance", but that the inclusion of such assurances can cause difficulties in reconciling the comfort letter model with the IFAC International Framework for Assurances Engagements. FEE does not describe these alleged difficulties or clarify why such reconciliation is necessary.

We think that it is inaccurate for FEE to state that comfort letters "may" involve assurance work, when, in our experience, negative assurance is included in almost all comfort letters. It is rare for investment banks to participate in a transaction in which the auditors do not provide negative assurance in the comfort letter. The standard or reference point for comfort letters in most multi-jurisdictional offerings (and, in particular, an offering which is sold into the United States) is Statement on Auditing Standards no. 72 (SAS 72) or the "IPMA" comfort letter for investment grade issuers. Under SAS 72 and German standard IDW PS 910 issued by the Institut der Wirtschaftsprüfer in Deutschland (IDW), negative assurance is omitted only when 135 days or more have elapsed since the date of the last audited or reviewed financial statements. Banks generally insist that the timing of the securities offering is such that the financials are not stale under the 135-day rule and the auditors are able to provide negative assurance.

In summary, FEE's suggestion that comfort letters should be only be issued on the basis of agreed-upon procedures would deviate significantly from accepted market practice and would significantly weaken the value of comfort letters to banks. We believe that over time, this proposal would result in a decrease in the quality of financial information provided by issuers to the market.

2. Engagement Letters (Issue for Discussion 2)

In principle an engagement letter is not necessary in any jurisdiction.

3. Managers' Relationship with the Issuer (Issue for Discussion 3)

Investment banks require a comfort letter in their role as lead manager and not as an investor. Throughout the Discussion Paper, FEE queries whether it is appropriate for an issuer to provide information to the banks if that information is not also provided to investors. We do not understand FEE's concerns with this and believe that it may reflect a fundamental misunderstanding of the role of banks in securities offerings. In particular, in order for the banks perform their role in an offering they will of necessity receive non-public information that will not be made public to investors, including confidential contract information, detailed budgets, plans, forecasts and projections.

4. Professional Secrecy Provisions (Issue for Discussion 4)

Yes, the issuer should in all cases authorize the auditor to release confidential information to the banks.

5. Comfort Letter Addressees and Due Diligence Representations (Issue for Discussion 5)

It is practice for banks only to provide a due diligence representation in the form quoted by FEE when the auditors are issuing a SAS 72 letter. To the extent auditors are issuing a comfort letter other than a SAS 72 comfort letter, no representation should be necessary. As for the recipients of the comfort letter, it should be delivered to the managers of an issue.

6. Audit Basis (Issue for Discussion 6)

An audit base should not be required. There are situations where it is necessary for an auditor who has not previously audited the issuer's financial statements to issue a comfort letter. For example, where the issuer changes auditors close to the time of an offering. It is unlikely that the auditors who have been replaced will be willing to issue a comfort letter.

7. Auditor Independence (Issue for Discussion 7)

We agree that such a section would be desirable to the extent not already practice as, for example, under IDW PS 910.

8. Interim Financial Information (Issue for Discussion 8)

The Prospectus Directive requires an issuer to include in its offering document quarterly or half yearly financial information since the date of its last audited financial statements if it has *published* such financial information. If this information has been audited or reviewed, the audit or review report must also be included in the offering document. FEE understands this provision to require that any interim financial information that has been reviewed by an auditor should be included in the offering document, together with the review report. However, we believe that the common understanding of this requirement is that a review solely for the issuer's internal purpose is outside the scope of the Prospectus Directive and the review is not required to be included the prospectus. We do not think that it is appropriate for FEE to advocate a stricter disclosure requirement than that required by the Prospectus Directive.

With respect to the issue of comfort on interim financial statements, FEE's view is that current market practice is for auditors not to issue comfort on interim financial statements. FEE asserts that where the review report is included in the offering document (and, according to FEE, whenever a review is performed, the review report must be included in the offering document), the auditor should not provide assurances on the interim financial statements in the comfort letter. FEE claim that, if the auditors do not review the interim financial statements, they are not in a position to issue assurance on subsequent changes occurring from the date of the last audited historical financial statements to the date of the interim financial statements. In our view, FEE's position is contrary to accepted market practice in multi-jurisdictional offerings.

The fact that a review report is included in the offering document does not preclude the auditors from issuing comfort in the comfort letter on the interim financial statements that are the subject of the report. Rather, the review report should be part of the comfort letter to ensure that the auditors are responsible to the banks for the contents of the report. The fact that the auditors have not completed a full review of the interim financial statements also should not preclude the auditors from providing assurances in the comfort letter on the interim financial statements. It is accepted market practice that agreed-upon procedures, such as reading the minutes of the board and shareholder meetings and enquiries to the management, provide a sufficient basis for auditors to provide assurances in the comfort letter on the interim financial statements.

9. Comfort as to Significant Changes (Issue for Discussion 9)

We do not agree that a review (ISRE 2400) should be required for an auditor to provide negative assurance (see response above to Issue for Discussion 1). We do not think that any engagement that may be agreed with the issuer should be included in the offering document.

10. Internal Management Reporting (Issue for Discussion 10)

Current market practice is that negative assurance is provided whether or not there are monthly reports post audit or review and in our view there does not need to be any change to this practice (ie. no additional criteria should be introduced).

11. Material Adverse Changes (Issue for Discussion 11)

FEE states that general practice prohibits comfort from being issued on general assertions such as "material adverse change", as these assertions are not defined from an accounting standpoint. This is a potentially misleading statement given that it is established market practice for reporting accountants in the United Kingdom to produce comfort letters in relation to matters such as whether or not a material or significant change in a company's financial or trading position has occurred since the date of the company's latest published audited financial statements notwithstanding the fact that there are no definitions of such terms from an accounting standpoint. For example, Item 20.9 of Annex 1 of the Prospectus Rules of the Financial Services Authority in the UK requires disclosure in the prospectus of any significant change in a company's financial or trading position or appropriate negative statements in the prospectus. It is established market practice that reporting accountants produce a comfort letter in this regard addressed to the issuer, the sponsor and the bookrunning lead manager(s). An additional example is that in the UK, Rule 24.2 of the City Code on Takeovers and Mergers requires disclosure in the offer document produced in connection with a takeover of all known material changes in the financial or trading position of the company since the date of the company's latest published audited financial statements. It is established market practice that reporting accountants produce a comfort letter in this regard addressed to both the company and its financial adviser.

Other Issues arising from the FEE Paper and the Illustrative Examples of a Comfort Letter and Engagement Letter

1. Governing Law and Jurisdiction (Responsibility and Liability)

FEE asserts that the applicable governing law and jurisdiction should be agreed between the issuer and the auditor and set out in the comfort letter. This proposal contradicts the accepted market practice (other than with respect to the German standard IDW PS 910) that governing law and jurisdiction provisions are not included in comfort letters. As mentioned above, accepted market practice in multi-jurisdictional transactions has largely been based on SAS 72 (and to some extent the IPCA comfort letter). Neither SAS 72 nor the IPCA comfort letter contains a governing law or jurisdiction provision.

To the extent that there is an engagement letter between the banks and the auditor regarding the issuance of a comfort letter outside the United States (whether a SAS 72 or an IPCA comfort letter), it is appropriate to include a governing law and jurisdiction provision, but the jurisdiction should be non-exclusive, rather than

exclusive as FEE suggests. Non-exclusive jurisdiction is best practice in the context of multi-jurisdictional securities offerings and it is current market practice in engagement letters for the provision of SAS 72 letters outside the United States. In such offerings, the banks may face suit from investors in many different jurisdictions and should be able to introduce the comfort letter they received from the respective auditor as part of their due diligence defence or join the respective auditor to the litigation, if necessary. Notwithstanding the fact that the IPCA engagement letters and IDW PS 910 have adopted exclusive jurisdiction, we believe that best practice is for an engagement letter to provide for non-exclusive jurisdiction for the reasons we set out above.

2. Financial Forecasts and Pro Forma Information

FEE states that current market practice is that auditors do not comment on either forecast or pro forma information in the comfort letter. This contradicts accepted practice under SAS 72, which provides the procedures for reviewing pro forma and forecast information and the respective language to be included in the comfort letter. With respect to both pro forma and forecast information, SAS 72 provides that auditors may comment on such information in a comfort letter when they have an appropriate level of knowledge of the accounting and financial reporting practices of the issuer, including the issuer's internal control as it relates to the preparation of both annual and interim financial information.

3. Restrictions on Use/Disclosure

The FEE has included the following wording restricting the use/disclosure of the comfort letter.

> *"This letter is solely for the information of the Issuer and the underwriter, as being responsible for the content of the prospectus, in conducting and documenting their investigation of the affairs of the issuer in connection with the offering of the securities covered by the Prospectus. It is not to be used, circulated, quoted, or otherwise referred to within or out of the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities. Nor is it to be filed with or referred to in whole or in part in the Prospectus or any other document, except that reference may be made to it in the purchase contract (or subscription agreement) or in any list of closing documents pertaining to the offering of the securities covered by the Prospectus."*

We have two objections to this wording. First, it is incorrect to state that the underwriter is responsible for the contents of the prospectus. This wording is not included in a SAS 72 comfort letter.

Secondly, auditors should allow banks to disclose the comfort letter (i) to their professional advisers; (ii) as may be required by law or regulation; or (iii) to third parties where to do so would be necessary in connection with any potential or actual dispute relating to, arising out of or in connection with, the securities offering. These exceptions are typically included in an engagement letter (if one exists) between the

auditors and the banks. If there is no such engagement letter, in our view such exceptions should be included in the comfort letter itself. We believe that this position represents "best practice". With respect to (i) above, in order to receive full and accurate advice from legal advisers, legal advisers need to be aware of the facts. This is especially important with respect to the issuer's financial situation. To restrict legal advisers from reviewing comfort letters would negatively affect the quality of advice received from the advisers by the banks. In the case of (ii) above, banks clearly need to be able to disclose a comfort letter if required by law or regulation. Finally, with respect to (iii) above, as FEE states in the Discussion Paper, in a securities offering, one of the bank's investigation procedures is to request that the auditors provide them with a comfort letter. This letter forms an integral part of the banks' defence against liability. The language we have proposed makes clear that the banks can use the comfort letter to support a due diligence defence.

Conclusion

A number of FEE's suggestions in the Discussion Paper are significant departures from accepted market practice in multi-jurisdictional securities offerings. For this reason and the others we have discussed above, many of FEE's proposals are not acceptable to us and, we believe, would not be acceptable to other market participants. Moreover, and more broadly speaking, we believe that these potential changes to existing market practice would not be in the best interest of the public securities market and investors.